

MONTANA LEGISLATIVE HISTORY

Chapter 290 1999

Bill H _____ S 473 Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 3/19 _____ C

✓ 3/26 _____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 2/17 _____ C

✓ 2/17 _____ C

_____ C

_____ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

SENATE BILLS AND RESOLUTIONS

263

2/23	3rd Reading Passed	33	17
	Transmitted to House		
3/02	Referred to Judiciary		
3/23	Hearing		
3/26	Committee Executive Action--Bill Concurred as Amended	20	0
3/27	Committee Report--Bill Concurred as Amended		
3/29	2nd Reading Concurred	92	7
3/30	3rd Reading Concurred	92	8
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	50	0
4/09	3rd Reading Passed as Amended by House	42	8
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/15	Signed by President		
4/16	Signed by Speaker		
4/16	Transmitted to Governor		
4/22	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 466		
	Effective Date: 10/01/1999 - All Sections		

SB 473 Introduced by Doherty

LC1834 Drafter: Lane

Generally Revise the Laws Relating to Estates, Trusts, and Fiduciary Relationships;...

By Request of Senate Judiciary Standing Committee

2/13	Introduced and 1st Reading		
2/13	Referred to Judiciary		
2/17	Hearing		
2/17	Committee Executive Action--Bill Passed	8	0
2/17	Committee Report--Bill Passed		
2/20	2nd Reading Passed	47	0
2/22	3rd Reading Passed	49	0
	Transmitted to House		
2/23	Fiscal Note Requested		
3/02	Referred to Judiciary		
3/02	Fiscal Note Received		
3/04	Fiscal Note Printed		
3/19	Hearing		
3/26	Committee Executive Action--Bill Concurred	19	0
3/27	Committee Report--Bill Concurred		
3/29	2nd Reading Concurred	99	0
3/30	3rd Reading Concurred	99	0
	Returned to Senate		
3/30	Sent to Enrolling		
3/31	Returned from Enrolling		
3/31	Signed by President		
4/07	Signed by Speaker		
4/07	Transmitted to Governor		
4/09	Signed by Governor		

4/12 Chapter Number Assigned
 Chapter Number 290
 Effective Date: 4/09/1999 - All Sections

SB 474 Introduced by Bishop *LC1669 Drafter: Kurtz*

Prioritize the Expenditure of Money Received by the Department of Fish, Wildlife, and Parks Through the Sale of Resident and Nonresident Upland Game Bird, Combination Sports, and Big Game Combination Licenses;...

2/13 Introduced and 1st Reading
 2/13 Referred to Fish and Game
 3/01 Missed Deadline for General Bill Transmittal

SB 475 Introduced by Bishop *LC1275 Drafter: Kurtz*

Revise the Penalties for Noncompliance with Motor Vehicle Insurance Requirements;...

2/13 Introduced and 1st Reading
 2/16 Hearing
 2/17 Tabled in Committee
 3/01 Missed Deadline for General Bill Transmittal

SB 476 Introduced by Bishop *LC0839 Drafter: Lane*

Revise the Laws Relating to Construction Liens;...

2/13	Introduced and 1st Reading		
2/13	Referred to Judiciary		
2/17	Hearing		
2/17	Fiscal Note Requested		
2/19	Committee Executive Action--Bill Passed as Amended	8	0
2/20	Committee Report--Bill Passed as Amended		
2/22	Fiscal Note Received		
2/22	Fiscal Note Signed		
2/22	Fiscal Note Printed		
2/22	2nd Reading Passed	49	0
2/23	3rd Reading Passed	48	1
	Transmitted to House		
3/02	Referred to Judiciary		
3/23	Hearing		
3/25	Tabled in Committee		
3/30	Taken from Table in Committee		
3/30	Committee Executive Action--Bill Concurred as Amended	17	2
3/30	Committee Report--Bill Concurred as Amended		
4/01	2nd Reading Concurred as Amended	91	6
4/01	3rd Reading Concurred	94	5
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	48	2
4/09	3rd Reading Passed as Amended by House	46	4
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/15	Signed by President		
4/16	Signed by Speaker		
4/16	Transmitted to Governor		

SENATE BILL NO. 473

INTRODUCED BY S. DOHERTY

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS; CLARIFYING THE DEFINITION OF PARENT-CHILD RELATIONSHIP; CLARIFYING COMPUTATION OF THE AUGMENTED ESTATE; CONFORMING DISCLAIMER RULES TO FEDERAL REGULATIONS; ALLOWING A PERSONAL REPRESENTATIVE TO CONTINUE AN UNINCORPORATED BUSINESS; CLARIFYING CIRCUMSTANCES IN WHICH A GUARDIAN OF A MINOR MAY BE APPOINTED; EXTENDING THE EXEMPTION FROM INHERITANCE TAXES FOR STEPCHILDREN; ALLOWING CERTAIN PERSONAL PROPERTY OWNED BY A TRUST TO BE DISPOSED OF BY SEPARATE WRITING; PROVIDING AN OBJECTIVE STANDARD GOVERNING INVESTMENTS BY TRUSTEES BY CLARIFYING THE PRUDENT INVESTOR RULE; PROVIDING FOR DISTRIBUTION OF CHARITABLE TRUSTS' ASSETS UPON TERMINATION OF THE TRUST; REQUIRING A STATEMENT OF PURPOSE OF TRUST JUDICIAL PROCEEDINGS IN A NOTICE OF HEARING; AMENDING SECTIONS 72-2-124, 72-2-221, 72-2-222, 72-2-811, 72-3-613, 72-5-222, 72-34-113, 72-34-114, 72-34-205, AND 72-35-306, MCA, AND SECTION 3, CHAPTER 464, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-2-124, MCA, is amended to read:

"72-2-124. Parent and child relationship. (1) Except as provided in subsections (2) and (3), for the purposes of intestate succession by, through, or from a person, an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under Title 40, chapter 6, part 1.

(2) An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on:

- (a) the relationship between the child and ~~either~~ that natural parent; or
- (b) the right of the child or a descendant of the child to inherit from or through

the other natural parent.

(3) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the parent's and has not refused to support the child."

Section 2. Section 72-2-221, MCA, is amended to read:

"72-2-221. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the
spouse were married to
each other:

The
per

Less than 1 year	supplemental amount only
1 year but less than 2 years	3% of the augmented estate
2 years but less than 3 years	6% of the augmented estate
3 years but less than 4 years	9% of the augmented estate
4 years but less than 5 years	12% of the augmented estate
5 years but less than 6 years	15% of the augmented estate
6 years but less than 7 years	18% of the augmented estate
7 years but less than 8 years	21% of the augmented estate
8 years but less than 9 years	24% of the augmented estate
9 years but less than 10 years	27% of the augmented estate
10 years but less than 11 years	30% of the augmented estate
11 years but less than 12 years	34% of the augmented estate
12 years but less than 13 years	38% of the augmented estate
13 years but less than 14 years	42% of the augmented estate
14 years but less than 15 years	46% of the augmented estate
15 years or more	50% of the augmented estate

(2) If the sum of the amounts described in 72-2-222(2)(d), 72-2-227(1)(a) through (1)(c), and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under 72-2-227(2) and (3) is less than \$50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in 72-2-227(2) and (3).

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death."

Section 3. Section 72-2-222, MCA, is amended to read:

"72-2-222. Augmented estate. (1) (a) As used in this section, the following definitions apply:

(i) "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, that are included in the augmented estate under subsection (2)(b).

(ii) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(iii) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(iv) "Nonadverse party" means a person who does not have a substantial beneficial

interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(v) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(vi) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate and includes a power to revoke or invade the principal of a trust or other property arrangement.

(vii) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(viii) "Property" includes values subject to a beneficiary designation.

(ix) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(x) "Transfer", as it relates to a transfer by or of the decedent, includes:

(A) an exercise or release of a presently exercisable general power of appointment held by the decedent;

(B) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

(C) an exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of a power described in subsection (2)(b)(ii)(B) that the decedent conferred on a nonadverse party.

(b) (i) As used in subsection (2)(b)(iii)(A), "termination":

(A) with respect to a right or interest in property, means that the right or interest terminated by the terms of the governing instrument or that the decedent transferred or relinquished the right or interest; and

(B) with respect to a power over property, means that the power terminated by

exercise, release, lapse, or default or otherwise.

(ii) With respect to a power described in subsection (2)(b)(i)(A), "termination" means that the power terminated by exercise or release, but not by lapse or by default or otherwise.

(2) The augmented estate consists of the sum of:

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims;

(b) the value of the decedent's nonprobate transfers to others, which are composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) property of any of the following types that passed outside probate at the decedent's death:

(A) property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment; the amount included is the value of the property subject to the power, to the extent that the property was passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse;

(B) the decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship; the amount included is the value of the decedent's fractional interest, to the extent that the fractional interest was passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse; or

(C) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship; the amount included is the value of the decedent's ownership interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;

(ii) property transferred in any of the following forms by the decedent during marriage:

(A) any irrevocable transfer in which the decedent retained the right to the

possession or enjoyment of, or to the income from, the property if and to the extent that the decedent's right terminated at or continued beyond the decedent's death; the amount included is the value of the fraction of the property to which the decedent's right related, to the extent that the fraction of the property was passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse; or

(B) any transfer in which the decedent created a power over the income or principal of the transferred property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, for the benefit of the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate; the amount included is the value of the property subject to the power, to the extent that the power was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent that the property subject to the power passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse; and

(iii) property that passed during marriage and during the 2-year period preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(A) any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection (2)(b)(i)(A), (2)(b)(i)(B), (2)(b)(i)(C), or (2)(b)(ii) if the right, interest, or power had not terminated until the decedent's death; the amount included is the value of the property that would have been included under these subsections, except that that property is valued at the time that the right, interest, or power terminated, and is included only to the extent that the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse; or

(B) any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse; the amount included is the value of the transferred property to the

extent that the aggregate transfers to any one donee in either of the 2 years exceeded ~~\$10,000~~ the amount excluded from federal taxable gifts pursuant to section 2503(b) of the Internal Revenue Code in effect in the year of transfer;

(c) the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which are composed of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(i) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(ii) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner;

(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death; and

(iv) all other property that would have been included in the augmented estate under subsection (2) (b) (i) or (2) (b) (ii) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, but excluding property passing to the surviving spouse under the federal social security system; and

(d) except to the extent included in the augmented estate under subsection (2) (a) or (2) (c), the value of:

(i) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(A) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(B) the surviving spouse's ownership interest in property or accounts held in

co-ownership registration with the right of survivorship; and

(C) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(ii) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included in subsections (2)(d)(i)(A) and (2)(d)(i)(B), had the spouse been the decedent. Property included under this subsection (2)(d)(ii) is valued at the decedent's death, taking into account the fact that the decedent predeceased the spouse, except that, for purposes of subsections (2)(d)(i)(A) and (2)(d)(i)(B), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. The value of property included under this subsection (2)(d)(ii) is reduced in each category by enforceable claims against the included property and is reduced by enforceable claims against the surviving spouse.

(3) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse; or

(c) if the property is life insurance, accident insurance, pension, profit-sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate.

(4) The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system. The commuted value of life and term interests in income, annuity, or unitrust amount must be determined in accordance with U.S. treasury regulations for internal revenue purposes in effect at the time of the

decedent's death.

(5) In case of overlapping application to the same property of the provisions of subsection (2), the property is included in the augmented estate under the provision yielding the highest value, but under any one, but only one, of the overlapping provisions if they all yield the same value."

Section 4. Section 72-2-811, MCA, is amended to read:

"72-2-811. Disclaimer of property interests. (1) (a) A person or the representative of a person to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of attorney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) The following rules govern the time when a disclaimer must be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest

is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant may disclaim as a separate interest any property or interest in property devolving to the surviving joint tenant by right of survivorship within 9 months after the death of the deceased joint owner, regardless of whether the surviving joint tenant contributed to the purchase of jointly held property or benefitted from the jointly held property prior to the other joint tenant's death. ~~A surviving joint tenant may disclaim the entire interest in any property or interest in the property that is the subject of a joint tenancy devolving to the joint tenant if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit under it.~~

(d) If real property or an interest in the property is disclaimed, a copy of

the disclaimer may be recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed is located.

(3) The disclaimer must:

- (a) describe the property or interest disclaimed;
- (b) declare the disclaimer and extent of the disclaimer; and
- (c) be signed by the disclaimant.

(4) The following are the effects of a disclaimer:

(a) If property or an interest in property devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of the death of the decedent.

(b) If property or an interest in property devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes

effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and on all persons claiming through or under either of them.

(5) The right to disclaim property or an interest in the property is barred by:

(a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest or a contract therefor;

(b) a written waiver of the right to disclaim;

(c) an acceptance of the property or interest or benefit under it; or

(d) a sale of the property or interest under judicial sale made before the disclaimer is made.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under any other statute.

(7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after October 1, 1993."

Section 5. Section 72-3-613, MCA, is amended to read:

"72-3-613. Transactions authorized for personal representative. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that

continue as obligations of the estate, as ~~he~~ the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due on the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, ~~he~~ the personal representative may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange,

partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and ~~himself~~ the personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court, effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of

encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his the personal representative's administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his the personal representative's duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; provided, however, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate ~~he~~ that the personal representative represents, nor ~~may he~~ be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death;

~~----- (a) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;~~

~~----- (b) in the same business form for any additional period of time that may be~~

~~approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or~~

~~----- (c) throughout the period of administration, if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate; in the same business form, including a sole proprietorship, partnership, or limited liability company, unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that continuation of the business is not in the best interests of the estate or its beneficiaries;~~

(25) incorporate any business or venture in which the decedent was engaged at the time of ~~his~~ death;

(26) satisfy and settle claims and distribute the estate as provided in this code."

Section 6. Section 72-5-222, MCA, is amended to read:

"72-5-222. Court appointment of guardian of minor -- when allowed -- priority of testamentary appointment. (1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or if parental rights have been suspended or limited by circumstances or prior court order.

(2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment has not been prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding."

Section 7. Section 72-34-113, MCA, is amended to read:

"72-34-113. Duty not to delegate entire administration of trust. (1) The trustee has a duty not to delegate ~~to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate~~ the entire administration of the trust to a cotrustee or other person.

~~----- (2) In a case where a trustee has properly delegated a matter to an agent, co-trustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.~~

(2) A trustee may delegate investment, management, and administrative functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;

(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(3) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(4) A trustee who complies with the requirements of subsection (2) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(5) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state."

Section 8. Section 72-34-114, MCA, is amended to read:

"72-34-114. Duty to use ordinary skill and prudence. (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

~~----- (2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust~~

~~pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.~~

(2) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(3) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of a trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(4) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:

- (a) general economic conditions;
- (b) the possible effect of inflation or deflation;
- (c) the expected tax consequences of investment decisions or strategies;
- (d) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- (e) the expected total return from income and the appreciation of the capital;
- (f) other resources of the beneficiaries;
- (g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(5) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(6) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

~~—(3)-(7)~~ The trustor may expand or restrict the standards provided in subsections (1) and (2) through (6) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

(8) Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight."

Section 9. Section 72-34-205, MCA, is amended to read:

"72-34-205. Incorporation in trust instruments. The provisions of 72-34-202 through 72-34-204 and [section 12] shall be considered to be contained in the instrument creating every trust to which this part applies. Any provision of the instrument inconsistent with or contrary to this part is without effect."

Section 10. Section 72-35-306, MCA, is amended to read:

"72-35-306. Notice. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are not petitioners:

———(1)(a) all trustees;

———(2)(b) all beneficiaries who are entitled to notice; and

———(3)(c) the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

(2) The notice for a petition and hearing requesting the court to settle accounts or pass upon the acts of the trustee or that otherwise may affect substantive property rights of a beneficiary or other interested party must state that fact in the notice and must further state that failure to appear and object bars any further claims against the trustee relating to the subject matter of the petition."

NEW SECTION. Section 11. Separate writing identifying disposition of tangible personal property. (1) A trust may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the trust, other than money.

(2) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the trustor and must describe the items and the devisees

with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the trustor's death;

(b) prepared before or after the execution of the trust;

(c) altered by the trustor after its preparation; and

(d) a writing that has no significance apart from its effect upon the dispositions made by the trust.

NEW SECTION. **Section 12. Disposition of property upon termination of 501(c)(3) trust.** At the termination of a charitable trust, private foundation, or any other trust described in section 501(c)(3) of the Internal Revenue Code, the trust property must be distributed for one or more exempt purposes or to organizations that are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or must be distributed to the federal government or to a state or local government for a public purpose. Any trust property not disposed of must be disposed of by the district court for the county in which the principal office of the trust is then located, exclusively for exempt purposes or to organizations, as the court determines, that are organized and operated exclusively for exempt purposes.

Section 13. Section 3, Chapter 464, Laws of 1997, is amended to read:

"Section 3. ~~Termination -- applicability~~ Applicability. ~~(1) [Section 1] terminates July 1, 1999.~~

~~----- (2) Notwithstanding the provisions of subsection (1), [section [Section 1] applies to all inheritance taxes arising from deaths occurring between after January 1, 1995, and July 1, 1999."~~

NEW SECTION. **Section 14. Codification instruction.** (1) [Section 11] is intended to be codified as an integral part of Title 72, chapter 33, part 2, and the provisions of Title 72, chapter 33, part 2, apply to [section 11].

(2) [Section 12] is intended to be codified as an integral part of Title 72,

chapter 34, part 2, and the provisions of Title 72, chapter 34, part 2, apply to [section 12].

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

- END -

FISCAL NOTE

Bill #: SB0473

Title: Revise probate and trust codes

Primary

Sponsor: Steve Doherty

Status: 2nd reading

Sponsor signature	Date	Dave Lewis, Budget Director	Date
-------------------	------	-----------------------------	------

Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Revenue:		
General Fund	\$0	(\$290,649)

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget	X		Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. This act is effective upon passage and approval.
2. The only provision of the bill which affects state revenue is the extension of the inheritance tax exemption on property which is passed to stepchildren who were any age when the relationship of the stepchild to the decedent began. Under current law, for deaths occurring after July 1, 1999, the exemption is applicable only to stepchild relationships that began on or before the stepchild's 18th birthday.
3. Because under current law the exemption for property passed to stepchildren who were any age at the onset of the relationship is set to terminate for deaths occurring after July 1, 1999, and because the payment of the tax is not required for eighteen months after the death of the decedent, the effect of the exemption on state revenue will continue until December 31, 2000. Therefore, the exemption for any age stepchild is currently applicable to half of FY2001.
4. The cost of the exemption for property passed to any age stepchild is estimated to be \$290,649 for half of FY2001. Under the proposed law the effect of the exemption applies to all of fiscal 2001, and, therefore, the cost for fiscal 2001 is estimated to be \$581,299.

FISCAL IMPACT:

	<u>FY2000</u> <u>Difference</u>	<u>FY2001</u> <u>Difference</u>
<u>Revenues:</u>		
General Fund (01)	\$0	(\$290,649)

LONG-RANGE IMPACTS:

Only half of the yearly revenue effect of the proposed law change is shown in FY2001. For years beyond FY2001, the effect is estimated to be approximately \$600,000 per year.

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 17, 1999 at 8:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 450, 2/12/1999; SB 451,
2/12/1999; SB 456, 2/12/1999;
SB 473, 2/12/1999; SB 476,
2/12/1999; SB 477, 2/12/1999;
SB 486, 2/12/1999
Executive Action: SB 473; SB477; SB390; SB461;
SB463; SB303

Proponents' Testimony:

Noel Larrivee, Missoula/Ravalli Transportation Assoc. rose in support of SB 477. EXHIBIT(jus39a03)

Opponents' Testimony:

Al Smith, MT Trial Lawyers, said they oppose granting immunity and believe people, businesses, etc. should be responsible for their actions. This bill talks about incentives, but the question is what if there is a requirement by the employer that they have to participate in ridesharing and would they be immune. He said in sub-section 2, perhaps the word subsidize should be added to owned and leased. This bill has no instruction as to where it is going in the code.

Questions from Committee Members and Responses:

SEN. HALLIGAN asked what the liability issue is with respect to an employer who may pay mileage. Noel Larrivee said if an employer subsidizes an activity there is still no more liability.

SEN. HALLIGAN asked how Workers' Compensation would deal with this. Noel Larrivee said there is no conflict.

Closing by Sponsor:

SEN. MAHLUM said this bill doesn't attempt to discriminate against employees and is helpful in today's business climate.

{Tape : 2; Side : A; Approx. Time Counter : 10:11 a.m.}

Committee took a break from 10:11 to 10:30 a.m.

HEARING ON SB 473

Sponsor: SEN. STEVE DOHERTY, SD 24, Great Falls

Proponents:

Al Pontrelli, MT Assoc. of Life Underwriters

Opponents: None

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 24, Great Falls, opened on SB 473. EXHIBIT(jus39a04)

Proponents' Testimony:

Al Pontrelli, MT Assoc. of Life Underwriters, said there is some confusion in the bill. The first one is the disposition of death benefits from life insurance. He said he wanted to make sure that death benefits were not a part of the probate estate and it is not.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HOLDEN asked what the language on page 8, lines 6-8 meant?

SEN. DOHERTY said in trying to determine the value of any interest in income, annuities, or trusts, can be difficult in closing estates. This brings it into compliance with the statutes and makes it look at the treasury regulations in effect at the time of the descendant's death.

CHAIRMAN GROSFIELD asked what section does this come from? **SEN. DOHERTY** said this comes from the trust and probate section of the State Bar.

Closing by Sponsor:

SEN. DOHERTY closed on **SB 473**.

CHAIRMAN GROSFIELD took over the chair.

{Tape : 2; Side : A; Approx. Time Counter : 10:37 a.m.}

EXECUTIVE ACTION ON SB 477

Motion: **SEN. BISHOP** moved that **SB 477 DO PASS**.

Discussion:

SEN. BARTLETT asked if the people that are being granted immunity under this bill have any liability to begin with? **SEN. HOLDEN** said maybe this is a problem in Missoula, but not in his area. He said he doesn't think they should be suing people because they suggest ridesharing.

SEN. GRIMES said perhaps they could add the word "subsidize" on line 15 and make sure this is not mandatory.

SEN. JABS said he didn't think any employer would make it mandatory that people share rides.

interest of the child. If there is extended family who has been caring for children, they should have a separate civil right to be able to go in and argue that they have been parenting and they don't need to have the state interfere in this.

CHAIRMAN GROSFIELD said if he picked up a kid off the street and he provided a happy home life for several years, how does this scenario fit into this bill? **SEN. HALLIGAN** said it is probably kidnapping to do that. You couldn't enroll the child in school if you didn't have some legal authority, etc. In that example the state would probably have to interfere.

CHAIRMAN GROSFIELD said in his example, if this bill passed, would he have some kind of legal documentation to maintain. **SEN. HALLIGAN** said right now if he was the parent and came to get his children he would get them. This bill would give him the custodial right to be awarded parental powers.

SEN. GRIMES said if he took care of somebody's child for a length of time and then he thought there was something going on in the lives of the original parents that may be detrimental, could he have some standing to determine things like where the child should go to school, who they visit, etc.. **SEN. HALLIGAN** said that was correct, the statute allows for a child to be signed over for six months. He said in this case, he could develop the facts necessary for that child/parent relationship if the parents stay gone for an extended period of time.

SEN. GRIMES said this bill is set up in negative circumstances and maybe it could be voluntary in certain cases.

Closing by Sponsor:

SEN. HALLIGAN said they are not trying to terminate parental rights. Extended families are a very positive and stable thing. The language needs to be tighten up and this bill should be passed this session so those interests can start being balanced.

{Tape : 3; Side : A; Approx. Time Counter : 11:51 a.m.}

EXECUTIVE ACTION ON SB 473

Motion/Vote: **SEN. HALLIGAN** moved SB 473 DO PASS. Motion carried 7-0.

EXECUTIVE ACTION ON SB 461

Motion: **SEN. HALLIGAN** moved SB 461 BE TABLED.

9 58.473

LAW OFFICES OF
**CHURCH, HARRIS,
JOHNSON & WILLIAMS, P.C.**

LC 1834

I. W. CHURCH (1884-1972)
G. G. HARRIS (1883-1973)
JENNIFER CONWELL
LYNN M. DANKOWSKI
KENNETH R. DYRUD
JEAN E. FAURE
RICHARD F. GALLAGHER
KATHLEEN D. JENSEN
STEVEN M. JOHNSON
W. BJARNE JOHNSON
KRISTEN G. JURAS
DON A. LABAR
RON A. NELSON
GREGORY R. SCHWANDT

21 THIRD STREET NORTH, 3RD FLOOR
P.O. BOX 1645
GREAT FALLS, MONTANA 59403-1645

PHONE (406) 761-3000
FAX (406) 453-2313

201 WEST MAIN STREET, SUITE 104
P.O. BOX 7007
MISSOULA, MONTANA 59807-7007

PHONE (406) 542-3100
FAX (406) 542-3335

DANIEL E. SHANNON
TIMOTHY B. STRAUCH
GLENN E. TREMPER
DIRK A. WILLIAMS
JEFFREY G. WINTER
MILTON O. WORDAL

OF COUNSEL:
DALE FORBES
BJARNE JOHNSON
WM A. REID
CARTER WILLIAMS
JEANNIE YOUNG

PLEASE REPLY TO GREAT FALLS OFFICE

January 30, 1999

Senator Steve Doherty
State Capitol
Helena, MT 59601

Re: Technical Revisions to Montana Probate and Trust Codes

Dear Steve:

Enclosed please find the proposed legislation prepared and supported by the Business, Estates, Taxation, Trust and Real Estate Section of the Montana State Bar. Although most of the revisions are technical, there are a few substantive changes, including:

- (1) the permanent extension of the exemption for stepchildren from inheritance taxes;
- (2) the inclusion of objective investment guidelines governing trust investments, adapted from the Uniform Prudent Investor Act; and
- (3) clarification on the circumstances under which a trustee may delegate authority, adapted from the Uniform Prudent Investor Act.

I apologize that I am so late in getting this to you. Collaborating with attorneys is sometimes as frustrating as herding cats. Thank you for your assistance, and let me know what more I can do to shepherd it through the process.

Sincerely,

CHURCH, HARRIS, JOHNSON & WILLIAMS, P.C.

By: Kristen Juras

Kristen G. Juras

Exhibit # 4

From 2/17/99

The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

David Dennis
791-7333

LC1834

SENATE BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "GENERAL REVISIONS TO TITLE 72 (ESTATES, TRUSTS & FIDUCIARY RELATIONSHIPS); TO CLARIFY DEFINITION OF PARENT-CHILD RELATIONSHIP; TO CLARIFY COMPUTATION OF AUGMENTED ESTATE; TO CONFORM DISCLAIMER RULES TO FEDERAL REGULATIONS; TO ALLOW PERSONAL REPRESENTATIVE TO CONTINUE UNINCORPORATED BUSINESS; TO CLARIFY CIRCUMSTANCES IN WHICH A GUARDIAN OF A MINOR MAY BE APPOINTED; TO EXTEND EXEMPTION FROM INHERITANCE TAXES FOR STEPCHILDREN; TO ALLOW CERTAIN PERSONAL PROPERTY OWNED BY A TRUST TO BE DISPOSED OF BY SEPARATE WRITING; TO PROVIDE AN OBJECTIVE STANDARD GOVERNING INVESTMENTS BY TRUSTEES (CLARIFYING THE PRUDENT INVESTOR RULE); TO PROVIDE FOR DISTRIBUTION OF CHARITABLE TRUSTS' ASSETS UPON TERMINATION; TO REQUIRE STATEMENT OF PURPOSE OF TRUST JUDICIAL PROCEEDINGS IN NOTICE OF HEARING.

Section 1. Subsection 72-2-124(2) regarding the definition of a parent-child relationship is amended to read as follows:

- (2) An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on:
- (a) the relationship between the child and ~~either~~ that natural parent; or
 - (b) the right of the child or a descendant of the child to inherit from or through the other natural parent.

Comment. This change conforms the language of MCA Section 72-2-124(2) to the Uniform Probate Code.

Section 2. Subsection 72-2-221(2) regarding the calculation of the augmented estate is amended to read as follows:

- (2) If the sum of the amounts described in 72-2-222(2)(d), 72-2-227(1)(a), ~~72-2-227(1)(a)~~, and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under 72-2-227(2) and (3) is less than \$50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in 72-2-227(2) and (3). ?

Comment: This change corrects the amounts referred to in calculating whether a surviving spouse has received a minimal supplemental elective share of \$50,000, to include anything received

DATE 2/17/99

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 450, SB 451, SB 456,
SB 473, SB 476, SB 477, SB 486

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
JOHN CADBY	443-4121	MT BANKERS	SB 476	✓	
Belinda Faragher	782-3123	St. Lynch	SB 450		
Mike Foster	442-4162	MT Contractors' Assoc.	SB 476	✓	
NOEL LARRIVEE	523-4944	MRTMA	SB 477	✓	
G. Van Housen	20230	MHP	SB 456	✓	
BETTY WADDELL	442-3525	MT Assoc. of Churches	SB 486	✓	
Don Coburn	227-8629	Self	SB 450		✓
Ronda Carpenter	899-5059	Mt Housing Providers	SB 450	✓	
LEE KIARENG	273-2767				
DUANG KUAP	" 0188				
AL PONTRELLI	422-9555	MTALU	SB 473	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



SENATE STANDING COMMITTEE REPORT

February 17, 1999

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 473** (first reading copy -- white) do pass.

Signed: _____

A handwritten signature in cursive script, appearing to read "Lorents Grosfield", is written over a horizontal line.

Senator Lorents Grosfield, Chair

- END -

Committee Vote:
Yes 8, No 0.

391341SC.sjo

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN DAN MCGEE**, on March 19, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Robert C. Clark, Chairman (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 473, SB 505, 3/15/1999

Executive Action: SB 33 & SB 320-Tabled; SB 306-
Be Concurred in as Amended, SB
179-Be Concurred In

HEARING ON SB 473

Sponsor:

Senator Doherty presented SB 473.

{Tape : 1; Side : A; Approx. Time Counter : 39 - 70}

Proponents:

Christine Juras, Attorney

{Tape : 1; Side : A; Approx. Time Counter : 70 - 107}

David Dennis, Geico Company

{Tape : 1; Side : A; Approx. Time Counter : 107 - 119}

John Cadby, Montana Independent Bankers

{Tape : 1; Side : A; Approx. Time Counter : 119 - 126}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 126 - 265}

Closing by Sponsor:

Senator Doherty made closing statements.

{Tape : 1; Side : A; Approx. Time Counter : 215 - 284}

HEARING ON SB 505

Sponsor:

Senator Grimes presented SB 505.

{Tape : 1; Side : A; Approx. Time Counter : 284 - 343}

Proponents:

Kathy Coles, Advocate for Victims of Domestic Violence

{Tape : 1; Side : A; Approx. Time Counter : 343 - 384}

EXHIBIT(juh62a0

1)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 26, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: Rep. Chris Ahner (R)

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:

Executive Action: SB-477-Be Concurred in, SB
481-Be Concurred in, SB 486-Be

{Tape : 1; Side : B; Approx. Time Counter : 0 - 171}

EXECUTIVE ACTION ON SB 505

Motion: REP. ANDERSON moved that SB 505 BE CONCURRED IN.

Motion/Vote: REP. ANDERSON moved that SB 505 BE AMENDED. Motion failed 6-12 with P. Clark, Curtiss, Eggers, Facey, Gallus, Gutsche, Hurdle, Kitzenberg, Noennig, Williams, Wyatt, and Younkin voting no.

Motion/Vote: REP. WYATT moved that SB 505 BE AMENDED SEGREGATING SECTION 3. Motion carried 18-0.

Motion/Vote: REP. WYATT moved that SB 505 BE AMENDED LEAVING IN JULY 1, 1999 DATE. Motion carried 18-0.

(Rep. Ahner absent, Rep. Soft no proxy for amendments)

Motion/Vote: REP. ANDERSON moved that SB 505 BE CONCURRED IN AS AMENDED. Motion carried 12-7 with Anderson, R. Clark, Curtiss, Jore, McGee, Molnar, and Shockley voting no.

(Rep. Ahner absent)

{Tape : 1; Side : B; Approx. Time Counter : 171 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 360}

EXECUTIVE ACTION ON SB 463

Motion/Vote: REP. FACEY moved that SB 463 BE CONCURRED IN.

Motion carried 19-0.

(Rep. Ahner absent)

{Tape : 2; Side : A; Approx. Time Counter : 360 - 421}

EXECUTIVE ACTION ON SB 473

Motion/Vote: REP. YOUNKIN moved that SB 473 BE CONCURRED IN.

Motion carried 19-0.

(Rep. Ahner absent)

{Tape : 2; Side : A; Approx. Time Counter : 421 - 550}

EXECUTIVE ACTION ON SB 198

Motion: REP. CURTISS moved that SB 198 BE CONCURRED IN.

Motion: REP. SHOCKLEY moved that SB 198-BE AMENDED and LATER WITHDREW SAME AMENDMENT.



HOUSE STANDING COMMITTEE REPORT

March 26, 1999

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** report that **Senate Bill 473** (third reading copy -- blue) be concurred in.

Signed: Robert C. Clark
Representative Robert C. Clark, Chair

To be carried by Representative Mark Noennig

- END -

Committee Vote:
Yes 19, No 0.

681410SC.ham

3/26/99

1999 Montana Legislature

About Bill -- Links

SENATE BILL NO. 473

INTRODUCED BY S. DOHERTY

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE



AN ACT GENERALLY REVISING THE LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS; CLARIFYING THE DEFINITION OF PARENT-CHILD RELATIONSHIP; CLARIFYING COMPUTATION OF THE AUGMENTED ESTATE; CONFORMING DISCLAIMER RULES TO FEDERAL REGULATIONS; ALLOWING A PERSONAL REPRESENTATIVE TO CONTINUE AN UNINCORPORATED BUSINESS; CLARIFYING CIRCUMSTANCES IN WHICH A GUARDIAN OF A MINOR MAY BE APPOINTED; EXTENDING THE EXEMPTION FROM INHERITANCE TAXES FOR STEPCHILDREN; ALLOWING CERTAIN PERSONAL PROPERTY OWNED BY A TRUST TO BE DISPOSED OF BY SEPARATE WRITING; PROVIDING AN OBJECTIVE STANDARD GOVERNING INVESTMENTS BY TRUSTEES BY CLARIFYING THE PRUDENT INVESTOR RULE; PROVIDING FOR DISTRIBUTION OF CHARITABLE TRUSTS' ASSETS UPON TERMINATION OF THE TRUST; REQUIRING A STATEMENT OF PURPOSE OF TRUST JUDICIAL PROCEEDINGS IN A NOTICE OF HEARING; AMENDING SECTIONS 72-2-124, 72-2-221, 72-2-222, 72-2-811, 72-3-613, 72-5-222, 72-34-113, 72-34-114, 72-34-205, AND 72-35-306, MCA, AND SECTION 3, CHAPTER 464, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-2-124, MCA, is amended to read:

"72-2-124. Parent and child relationship. (1) Except as provided in subsections (2) and (3), for the purposes of intestate succession by, through, or from a person, an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under Title 40, chapter 6, part 1.

(2) An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on:

- (a) the relationship between the child and ~~either~~ that natural parent; or
- (b) the right of the child or a descendant of the child to inherit from or through the other natural parent.

(3) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the parent's and has not refused to support the child."

Section 2. Section 72-2-221, MCA, is amended to read:

"72-2-221. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other: The elective-share percentage is:

Less than 1 year supplemental amount only

1 year but less than 2 years 3% of the augmented estate

2 years but less than 3 years 6% of the augmented estate

3 years but less than 4 years 9% of the augmented estate

4 years but less than 5 years 12% of the augmented estate

5 years but less than 6 years 15% of the augmented estate

6 years but less than 7 years 18% of the augmented estate

7 years but less than 8 years 21% of the augmented estate

8 years but less than 9 years 24% of the augmented estate

9 years but less than 10 years 27% of the augmented estate

10 years but less than 11 years 30% of the augmented estate

11 years but less than 12 years 34% of the augmented estate

12 years but less than 13 years 38% of the augmented estate

13 years but less than 14 years 42% of the augmented estate

14 years but less than 15 years 46% of the augmented estate

15 years or more 50% of the augmented estate

(2) If the sum of the amounts described in 72-2-222(2)(d), 72-2-227(1)(a) through (1)(c), and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under 72-2-227(2) and (3) is less than \$50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in 72-2-227(2) and (3).

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death."

Section 3. Section 72-2-222, MCA, is amended to read:

"72-2-222. Augmented estate. (1) (a) As used in this section, the following definitions apply:

(i) "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, that are included in the augmented estate under subsection (2)(b).

(ii) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(iii) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(iv) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(v) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(vi) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate and includes a power to revoke or invade the principal of a trust or other property arrangement.

(vii) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(viii) "Property" includes values subject to a beneficiary designation.

(ix) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(x) "Transfer", as it relates to a transfer by or of the decedent, includes:

(A) an exercise or release of a presently exercisable general power of appointment held by the decedent;

(B) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

(C) an exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of a power described in subsection (2)(b)(ii)(B) that the decedent conferred on a nonadverse party.

(b) (i) As used in subsection (2)(b)(iii)(A), "termination":

(A) with respect to a right or interest in property, means that the right or interest terminated by the terms of the governing instrument or that the decedent transferred or relinquished the right or interest; and

(B) with respect to a power over property, means that the power terminated by exercise, release, lapse, or default or otherwise.

(ii) With respect to a power described in subsection (2)(b)(i)(A), "termination" means that the power terminated by exercise or release, but not by lapse or by default or otherwise.

(2) The augmented estate consists of the sum of:

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims;

(b) the value of the decedent's nonprobate transfers to others, which are composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) property of any of the following types that passed outside probate at the decedent's death:

(A) property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment; the amount included is the value of the property subject to

the power, to the extent that the property was passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse;

(B) the decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship; the amount included is the value of the decedent's fractional interest, to the extent that the fractional interest was passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse; or

(C) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship; the amount included is the value of the decedent's ownership interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;

(ii) property transferred in any of the following forms by the decedent during marriage:

(A) any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent that the decedent's right terminated at or continued beyond the decedent's death; the amount included is the value of the fraction of the property to which the decedent's right related, to the extent that the fraction of the property was passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse; or

(B) any transfer in which the decedent created a power over the income or principal of the transferred property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, for the benefit of the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate; the amount included is the value of the property subject to the power, to the extent that the power was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent that the property subject to the power passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse; and

(iii) property that passed during marriage and during the 2-year period preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(A) any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection (2)(b)(i)(A), (2)(b)(i)(B), (2)(b)(i)(C), or (2)(b)(ii) if the right, interest, or power had not terminated until the decedent's death; the amount included is the value of the property that would have been included under these subsections, except that that property is valued at the time that the right, interest, or power terminated, and is included only to the extent that the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse; or

(B) any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse; the amount included is the value of the transferred property to the extent that the aggregate transfers to any one donee in either of the 2 years exceeded \$10,000 the amount excluded from federal taxable gifts pursuant to section 2503 (b) of the Internal Revenue Code in effect in the year of transfer;

(c) the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which are composed of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(i) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(ii) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner;

(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death; and

(iv) all other property that would have been included in the augmented estate under subsection (2)(b)(i) or (2)(b)(ii) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, but excluding property passing to the surviving spouse under the federal social security system; and

(d) except to the extent included in the augmented estate under subsection (2)(a) or (2)(c), the value of:

(i) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(A) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(B) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(C) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(ii) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included in subsections (2)(d)(i)(A) and (2)(d)(i)(B), had the spouse been the decedent. Property included under this subsection (2)(d)(ii) is valued at the decedent's death, taking into account the fact that the decedent predeceased the spouse, except that, for purposes of subsections (2)(d)(i)(A) and (2)(d)(i)(B), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. The value of property included under this subsection (2)(d)(ii) is reduced in each category by enforceable claims against the included property and is reduced by enforceable claims against the surviving spouse.

(3) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse; or

(c) if the property is life insurance, accident insurance, pension, profit-sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate.

(4) The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system. The commuted value of life and term interests in income, annuity, or unitrust amount must be determined in accordance with U.S. treasury regulations for internal revenue purposes in effect at the time of the decedent's death.

(5) In case of overlapping application to the same property of the provisions of subsection (2), the property is included in the augmented estate under the provision yielding the highest value, but under any one, but only one, of the overlapping provisions if they all yield the same value."

Section 4. Section 72-2-811, MCA, is amended to read:

"72-2-811. Disclaimer of property interests. (1) (a) A person or the representative of a person to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of attorney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) The following rules govern the time when a disclaimer must be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future

interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant may disclaim as a separate interest any property or interest in property devolving to the surviving joint tenant by right of survivorship within 9 months after the death of the deceased joint owner, regardless of whether the surviving joint tenant contributed to the purchase of jointly held property or benefitted from the jointly held property prior to the other joint tenant's death. ~~A surviving joint tenant may disclaim the entire interest in any property or interest in the property that is the subject of a joint tenancy devolving to the joint tenant if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit under it.~~

(d) If real property or an interest in the property is disclaimed, a copy of the disclaimer may be recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed is located.

(3) The disclaimer must:

- (a) describe the property or interest disclaimed;
- (b) declare the disclaimer and extent of the disclaimer; and
- (c) be signed by the disclaimant.

(4) The following are the effects of a disclaimer:

(a) If property or an interest in property devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive

the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of the death of the decedent.

(b) If property or an interest in property devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and on all persons claiming through or under either of them.

(5) The right to disclaim property or an interest in the property is barred by:

(a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest or a contract therefor;

(b) a written waiver of the right to disclaim;

(c) an acceptance of the property or interest or benefit under it; or

(d) a sale of the property or interest under judicial sale made before the disclaimer is made.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under any other statute.

(7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after October 1, 1993."

Section 5. Section 72-3-613, MCA, is amended to read:

"72-3-613. Transactions authorized for personal representative. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as ~~he~~ the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, ~~he~~ the personal representative may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and ~~himself~~ the personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court, effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, ~~he~~ the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of ~~his~~ the personal representative's administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of ~~his~~ the personal representative's duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; provided, however, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate ~~he~~ that the personal representative represents, nor ~~may he~~ be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

~~—(a) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;~~

~~—(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or~~

~~—(c) throughout the period of administration, if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate; in the same business form, including a sole proprietorship, partnership, or limited liability company, unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that continuation of the business is not in the best interests of the estate or its beneficiaries;~~

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims and distribute the estate as provided in this code."

Section 6. Section 72-5-222, MCA, is amended to read:

"72-5-222. Court appointment of guardian of minor -- when allowed -- priority of testamentary appointment. (1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or if parental rights have been suspended or limited by circumstances or prior court order.

(2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment has not been prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding."

Section 7. Section 72-34-113, MCA, is amended to read:

"72-34-113. Duty not to delegate entire administration of trust. (1) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(2) ~~In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.~~

(2) A trustee may delegate investment, management, and administrative functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;

(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(3) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(4) A trustee who complies with the requirements of subsection (2) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(5) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state."

Section 8. Section 72-34-114, MCA, is amended to read:

"72-34-114. Duty to use ordinary skill and prudence. (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

~~—(2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.~~

(2) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(3) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of a trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(4) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(e) the expected total return from income and the appreciation of the capital;

(f) other resources of the beneficiaries;

(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(5) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(6) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

~~(3)~~(7) The trustor may expand or restrict the standards provided in subsections (1) ~~and (2)~~ through (6) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

(8) Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight."

Section 9. Section 72-34-205, MCA, is amended to read:

"72-34-205. Incorporation in trust instruments. The provisions of 72-34-202 through 72-34-204 and [section 12] shall be considered to be contained in the instrument creating every trust to which this part applies. Any provision of the instrument inconsistent with or contrary to this part is without effect."

Section 10. Section 72-35-306, MCA, is amended to read:

"72-35-306. Notice. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are not petitioners:

~~(1)~~(a) all trustees;

~~(2)~~(b) all beneficiaries who are entitled to notice; and

(3)(c) the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

(2) The notice for a petition and hearing requesting the court to settle accounts or pass upon the acts of the trustee or that otherwise may affect substantive property rights of a beneficiary or other interested party must state that fact in the notice and must further state that failure to appear and object bars any further claims against the trustee relating to the subject matter of the petition."

Section 11. Separate writing identifying disposition of tangible personal property. (1) A trust may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the trust, other than money.

(2) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the trustor and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

- (a) referred to as one to be in existence at the time of the trustor's death;
- (b) prepared before or after the execution of the trust;
- (c) altered by the trustor after its preparation; and
- (d) a writing that has no significance apart from its effect upon the dispositions made by the trust.

Section 12. Disposition of property upon termination of 501(c)(3) trust. At the termination of a charitable trust, private foundation, or any other trust described in section 501(c)(3) of the Internal Revenue Code, the trust property must be distributed for one or more exempt purposes or to organizations that are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or must be distributed to the federal government or to a state or local government for a public purpose. Any trust property not disposed of must be disposed of by the district court for the county in which the principal office of the trust is then located, exclusively for exempt purposes or to organizations, as the court determines, that are organized and operated exclusively for exempt purposes.

Section 13. Section 3, Chapter 464, Laws of 1997, is amended to read:

"Section 3. ~~Termination~~—applicability Applicability. (1) ~~[Section 1] terminates July 1, 1999.~~

(2) ~~Notwithstanding the provisions of subsection (1), [section [Section 1] applies to all inheritance taxes arising from deaths occurring between after January 1, 1995, and July 1, 1999."~~

Section 14. Codification instruction. (1) [Section 11] is intended to be codified as an integral part of Title 72, chapter 33, part 2, and the provisions of Title 72, chapter 33, part 2, apply to [section 11].

(2) [Section 12] is intended to be codified as an integral part of Title 72, chapter 34, part 2, and the provisions of Title 72, chapter 34, part 2, apply to [section 12].

Section 15. Effective date. [This act] is effective on passage and approval.

- END -

Latest Version of SB 473 (*SB0473.ENR*)

Processed for the Web on April 1, 1999 (10:01AM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the [status of the bill](#) for the bill's primary sponsor.

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Prepared by Montana Legislative Services
(406)444-3064